IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G.CHANDRAIAH

WRIT PETITION NO : 901 of 1994

Between:

1. Garapati Venkat Rao (died)
2. G.Sudhakar Rao S/o.late Venkat Rao
   Doramamidi Village Polavaram Taluk
   West Godavari Dist
3. G.Praveen Kumar S/o.late Venkat Rao
   Doramamidi Village Polavaram Taluk
   West Godavari Dist
4. G.Hemalatha D/o.late Venkat Rao
   Doramamidi Village Polavaram Taluk
   West Godavari Dist

..... PETITIONERS

AND

1 The Special Deputy Collector (Tribal Welfare-I), Eluru
2 The Agent to the Government West Godavari at Eluru
  (District Collector, Eluru)
3 The Government of Andhra Pradesh rep.by the Secretary to Government
  Social Welfare (Tribal Welfare) Dept., Secretariat Buildings, Hyderabad

.....RESPONDENTS

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GC,J

W.P.NO.901 OF 1994

O R D E R

Heard the learned counsel for the petitioners and the learned Government Pleader for Social Welfare for respondents.

2. Questioning the memo no.62/F1/85-6 dated 13.8.1993 issued by

the 3rd respondent in dismissing the revision filed by the petitioner and confirming the order dated 31.12.1984 passed by the 2nd respondent – Agent to Government, West Government, the present writ petition is filed.

3. During the pendency of the writ petition, the petitioner died and his legal representatives were brought on record.

4. The case of the petitioner is that his father purchased Acs.15-00 cents of land situate at Doramamidi village from Nandini China Satyanarayana Murthy (non-tribal) under a registered sale deed dated 23.1.196. The vendor in turn purchased a total extent of Acs.30-00 cents from another non-tribal Smt. Maddipati Subbamma w/o Venkataswamy under a registered sale deed dated 11.7.1959. Maddipati Subbamma succeeded to the said property by inheritance after the death of her husband Maddipati Venkataswamy. Maddipati Venkataswamy obtained patta from the estate holder Smt. Raja Manyam Mahalaxmamma, Zamindarini of Gutala Estate as early as in 1907. It is stated that the original pattadars Maddipati Venkataswamy and Nandini China Satyanarayana were are all non-tribals and as the transfer took place before 3.2.1970, it is perfectly valid and, therefore, by virtue of the transactions under which the petitioner has come into possession of the land in question are valid and are not attracted by the provisions of A. P. Scheduled Areas Land Transfer Regulations 1 of 1959 (henceforth referred to as 'the Regulations) and as amended by Regulation 1 of 1970.

5 . It is further averred that the Special Deputy Collector, Tribal Welfare, Eluru based on the complaint of Special Deputy Tahsildar under Section 3(2) of the Regulations that the schedule lands were in

enjoyment of non-tribals, ordered ejectment of the petitioner through order dated 19.3.1984 and directed assignment of the land to landless eligible poor persons. Aggrieved by the same, petitioner filed an appeal before the Agent to the Government, West Godavari, Eluru, the 2nd respondent herein, in S.R.A.No.32/1984. The 2nd respondent dismissed the appeal and confirmed the order of the Special Deputy Collector dated 19.3.1984. Challenging the same, the petitioner again filed a revision before the Principal Secretary to Government and by the impugned order dated 13.8.1003, the revision petition was dismissed and aggrieved by the said dismissal, the present writ petition is filed.

6. The respondents filed counter affidavit, denying the writ averments.

7. The learned counsel for the petitioner submitted that pending the revision before the 3rd respondent – Secretary to Government, Social Welfare, the petitioner was given a notice in memo no.62/F1/85-5, SWD dated 29.6.1993 to produce additional material/documents to prove his case. The contention of the leaned counsel for the petitioner is that though in response to the above notice, petitioner filed relevant documents in the form of list of documents, before the Government, the same were not taken into consideration before passing the impugned order. His further contention is that though in the grounds of the revision, the petitioner specifically asked for oral hearing before disposing of the revision, the same was not provided. Therefore, he contended that this amounts to not only violation of principles of natural justice, but also violation of the proviso to Section 6 of the Regulations.

8 . The learned Government Pleader for Social Welfare fairly conceded that in the counter affidavit of the respondents, there is no specific averment that opportunity of hearing was given to the petitioner and, therefore, it does not amount to compliance of proviso to Section 6 of the Regulations and as such, it is appropriate to remit the matter back to the 3rd respondent to consider the case of the petitioner afresh and pass appropriate orders in accordance with law.

9. As could be seen from the impugned order there is no reference that any opportunity of hearing was given to the petitioner. In fact Section 6 mandates for giving of oral hearing to the affected parties. Section 6 of the Regulations is extracted as under for better appreciation:

"6. Revision:

> The State Goverbment may revise any decree or order passed by the Agent, the Agency Divisional Officer or any other prescribed officer under this Regulation;
>
> Provided that this power shall be exercised only after due notice to the parties affected by the decree or order and after giving them a reasonable opportunity of being hearing.
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> (Emphasis added)

10. From the above proviso to Section 6, providing a reasonable opportunity of hearing to the affected parties is mandatory. Therefore, any order that is passed in contravention of the proviso to Section 6, does not stand to scrutiny under law.

11. Under the above facts and circumstances and also in view of the submissions made by both the counsel, the impugned memo issued by the 3rd respondent dated 13.8.1993 is hereby set aside

and matter is remitted back to the 3rd respondent to consider the revision petition afresh in accordance with law, after giving opportunity of being heard to the petitioner as contemplated under proviso to Section 6 of Regulations.

12. It is needless to mention that in the interest of justice it is always open to the petitioners to take all such pleas as are available to them in law.

13. The writ petition is accordingly allowed. No costs.

AVS ----------

26.07.2005